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REPORT ON SECOND SECTION OF AN ORDINANCE OF THE CONSTITUTIONAL CONVENTION.

The Committee on the Judiciary, in response to a resolution of the House, instructing them to report the proper construction of the second section of an Ordinance of the Constitutional Convention, entitled "An Ordinance to provide for the organization of the State of West Virginia," passed February 19, 1863, respectfully report as follows:

The section referred to is in the following words: "The terms of office of the persons then to be elected shall commence on and include the sixty-first day from the date of said proclamation; but shall continue and be computed, as if the same had begun on the first day of January, one thousand eight hundred and sixty-three; except that the terms of the Governor, Secretary of the State, Treasurer, and Auditor, shall continue and be computed, as if the same had begun on the fourth day of March, one thousand eight hundred and sixty-three." The proclamation referred to, as appears from the first section of the same ordinance, is the proclamation of the President of the United States issued under the Act of Congress admitting this State into the Union, by the terms of which, such admission was to be complete at the expiration of sixty days from the date of such proclamation. The election referred to, is that of Senators and Delegates, Governor, Secretary of the State, Treasurer, Auditor, Attorney General, Judges of the Court of Appeals, Judges and Clerks of the Circuit Courts, Sheriffs, Prosecuting Attorneys, Surveyors of Lands, and Recorders, appointed by the said first section to be held on the Thursday next succeeding the thirty-fifth day from the date of the said proclamation.

The committee are informed that this report is called for from the fact that doubts have been expressed by some whose opinions are entitled to respect, whether the Executive and the Judges and other salaried officers above mentioned, are not entitled to demand payment of their salaries from the fourth day of March and the first day of January last, respectively, from which days their terms of office, according to their view of said second section, are to be computed. The committee are aware that no expression of opinion or other action of the Legislature can give an authoritative interpretation of the constitution and accompanying ordinances; but inasmuch as not only the Attorney General, but every Judge of the State, is personally interested in the question raised by the resolu-

tion of the House, to which this report is a response, there is a peculiar propriety in the Legislature declaring their view of the true interpretation of the section above mentioned.

The language of that section is so plain and explicit as to leave no doubt on the mind of any of the committee as to its true and obvious interpretation, or as to the intention of its framers. There cannot, certainly, be even a plausible pretence that the convention intended that any officer should draw pay for a period which elapsed previous, as well to his election as to the commencement of his term of service, and in fact before the State to which his services are due, had an existence.

The section under consideration, says that "the terms of office of the persons then to be elected, shall *commence* on and include the sixty-first day from the date of said proclamation," which fell on the twentieth day of June last, the date of the inauguration of our State. A term which it is positively declared shall commence on a certain day, can by no possible grammatical construction of the words used, be inferred to be intended to commence on a day occurring more than three months previous. If the words "commence on the sixty-first day," were at all indefinite, such indefiniteness would be removed by the words "and include," found in the same sentence, which, in the connection in which they are used, plainly imply that no previous day was intended to be included.

The committee might stop here, as they have shown that the words of the section under consideration are positive and admit of but one construction. But if their meaning was less clear, that which the committee has given them could be sustained by every rule of construction applicable to the case. We are told by legal authority, that in the interpretation of the statute, the motives which led to the making of it, the object in contemplation, and the circumstances under which it was made, may be considered when there is any ambiguity in its language, or where a literal interpretation would convict its makers of uttering an absurdity. It may therefore be proper to inquire whether such considerations would affect the interpretation above given.

By the seventh section of the third article of the Constitution it is provided, that the terms of State and county officers, "not elected or appointed to fill a vacancy, shall, unless herein otherwise provided, begin on the first day of January next succeeding their election," and that "elections to fill vacancies shall be for the unexpired term." By the first section of the fifth article it is provided that the Governor shall "hold his office for the term of two years, to commence on the fourth day of March next succeeding his elec-

tion;" and by the seventh section of the same article, that "a Secretary of the State, a Treasurer, and an Auditor shall be elected at the same time, and for the same term, as the Governor."

This being the language of the Constitution in reference to the terms of State and county officers, what would have been its proper interpretation if the ordinance, after directing the election of State and county officers to be held on what proved to be the twenty-eighth of May last, had been silent as to the commencement of their terms? No one would have been so absurd as to contend that the terms of members of the Legislature, judges and county officers were not to begin until the first of January next, or those of the Governor and other State officers until more than two months later, although their terms were to commence on the days named *next after* their election. This would have left the State without a law making body, without judges and magistrates, and without county organization, for more than half a year, and without an executive for a still longer period; in short, there have been no State, (for the word implies organization,) until the first of January next, if then. The time at which it could be organized was unknown to the Convention, but it is manifest that they intended to provide for its organization at the earliest day practicable. The section referred to the committee is part of "An Ordinance to provide for the organization of the State of West Virginia," which directs the Legislature, elected on the twenty-eighth of May, to assemble and organize on the sixty-first day after the issue of the President's proclamation.

The committee again ask what would have been the proper interpretation of the provisions of the Constitution relating to the terms of officers, had the ordinance been silent on the subject? Certainly, not that the terms of the members of the Legislature who were to assemble on the 20th day of June, and within ten days to count the votes for Governor and declare his election, were not to commence until six months afterwards; and just as certainly not, that they were to commence nearly six months previous, and nearly five months before their own election. The terms for which they were to be elected having partly expired at the time the election was held, the only rational conclusion would be, that they were elected for the unexpired term; not for one or two years, as the case might be, but for fractions of those periods. They were in fact elected to fill vacancies, for a vacancy existed previous to their election as much as it now exists in cases where elections failed to be held on the day appointed, and by the Constitution, as already quoted, "Elections to fill vacancies shall be for the unexpired term." In this view of the case, their terms would have commenced on the day of their election.

But to remove all doubt upon the subject, the section referred to the committee was inserted in the ordinance. The Constitution had provided that the terms of all, except the executive officers named above, whether for one, two, four or more years, were to begin and end on the same day, although in different years, and those elected for terms of the same length, in the same year; while those of the executive officers named, except the Attorney General, were to begin and end on another day, but all in the same year. The Convention must have had an object in insisting upon this uniformity, and the second section of the ordinance was inserted for the purpose of preserving it. Had the Constitution fixed no time for the beginning and ending of the terms, each officer would have held for the term assigned him, from the day of his election, and elections to fill vacancies would, in the course of a few years, have made such a diversity of terms as must have led to great inconvenience. It is therefore fair to infer, indeed any other inference is hardly possible, that, while providing against any such diversity, and positively directing that the uniformity above spoken of should be preserved, the Convention, by prescribing in the second section of the ordinance when the terms of all officers elected at the first election should end, (for this is obviously the purpose of the section,) intended to exclude the conclusion that the terms of these officers should commence one, two or more years, as the case might be, before the period fixed for their termination.

Had the Convention intended to prescribe that the terms of officers under the Constitution to be submitted to the people for final ratification on the twenty-sixth of March following, and which could not go into operation until more than sixty days afterwards, should commence on the previous first of January and fourth of March, and the incumbents be compensated from their dates, they could have said so in very few words. They did not say so, but, on the contrary, as has been shown above, said explicitly that the terms of office of the persons elected in May last, should commence on the twentieth day of June following, and include that day. There is no foundation for even a quibble about the meaning of this language; but even if the word "commence," had been omitted from the section, there is enough left to sustain the interpretation of the committee. Had the language of that section been, simply, "The terms of office of the persons then to be elected shall be computed as if the same had begun on the first day of January, &c.," it would not have authorized the conclusion that the terms of the officers first elected began on that day. If such was intended to be its meaning, why insert the words "*as if the same had begun?*" Why not

say at once that the terms should be computed from the first day of January, &c.? The use of the words "as if" in the phrase just quoted, manifestly implies that the terms were not intended to begin on the first of January and fourth of March.

There is, however, another word in the connection which destroys any weight the direction that the terms should be *computed*, &c., might otherwise give to the inference that the salaries were also to be computed from the first of January and fourth of March. After fixing a day on which the terms were to commence, the section prescribes that they "shall *continue* and be computed as if," &c. There can be no continuance until there is a commencement. The word "continue," therefore, refers directly to the "sixty-first day," or the twentieth of June, and plainly indicates that the provisions of the section regard the future and not the past, and that the computation as well as the continuance is forward and not backward. In short, necessarily making the commencement of the terms contemporaneous with the inauguration of the State, the earliest date at which they could actually begin, its evident object, the sole purpose in view in its enactment, was to fix their termination on the days on which they would have ended had they begun on the first of January and fourth of March, respectively; thus excluding the inference that the language used applies, or has any reference, to any time previous to the inauguration of the State, except for the single purpose of ascertaining at what dates the terms should end, in order to preserve the uniformity referred to above.

This conclusion is corroborated by the twelfth section of the schedule of the original constitution, differing in language, but intended to provide for a similar contingency, and therefore properly referred to in seeking the true interpretation of the second section of the ordinance. The former ordains that the terms of the officers to be elected at the first election "shall begin twenty days after such election, but shall end on the day they would have ended had they begun on the first day of January, except that the term of the Governor shall be counted from the fourth day of March next after the said first day of January." The cases are precisely the same. In both, the day on which the election could be held, was uncertain. In the earliest, the language admits of but one interpretation. Its single object was to fix the days on which the terms should end. The intention of the other was therefore the same, and every question of interpretation is a question of intention.

The committee might truly assert that the Legislature has already declared the true interpretation of the section referred to them. The fourth section of the schedule of "An Act providing for and

regulating township meetings and elections," finally passed but a few days since, (House Bill No. 27,) in fixing the time for the termination of the terms of township officers, the time of the elections being uncertain and likely to fall on different days in the several counties of the State, uses identically, except that other days are mentioned, the language of the second section of the ordinance above referred to. Is any member of either branch prepared to admit that his intention in voting for it was to compensate the officers for any time previous to their election? And if they are not willing thus to stultify themselves, will they accuse the members of the Convention of a like intention.

The committee, for the reasons stated in this report, are unanimously of opinion that under the second section of the above entitled ordinance of the Constitutional Convention, considered in connection with the Constitution itself, the terms of all the State and county officers, including judges, elected in May last, commenced on the twentieth day of June following, and not previously.

The committee submit for the consideration of the Legislature, the subjoined joint resolution.

J. C. MCGREW, *Chairman, pro tem.*

Resolved by the Legislature of West Virginia:

The terms of all officers, legislative, executive or judicial, elected on the twenty-eighth day of May last, began on the twentieth day of June following, and not previously. No such officer is, or was at any time, entitled to salary or compensation for any time preceding the twentieth day of June in the present year.